

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2613**

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**Introduced by Assembly Member ~~Saldana~~ Beall**

February 19, 2010

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An act to amend ~~Section~~ *Sections 25845 and 53069.4* of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2613, as amended, ~~Saldana~~ *Beall*. Local government: fines and penalties: assessments.

Existing law authorizes the legislative body of a local agency to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, as specified.

This bill would authorize a local agency to, after notice and public hearing, specially assess any fines or penalties not paid after demand by the local agency against real property owned by the person owing those fines or penalties. The bill would provide that the assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes, and would authorize the local agency to record a lien against the property. *This bill would authorize a local agency to appoint a hearing officer to hear and decide issues regarding ordinance violations and the imposition of administrative fines and penalties.*

*Existing law authorizes a board of supervisors to delegate its powers and duties to establish a nuisance abatement procedure to a hearing officer appointed pursuant to specific statutory requirements regarding a county office of county hearing officer.*

*This bill would authorize a board of supervisors, with respect to nuisance abatement procedures, to appoint a hearing officer without complying with existing statutory requirements regarding county hearing officer.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 25845 of the Government Code is  
2     amended to read:

3     25845. (a) The board of supervisors, by ordinance, may  
4     establish a procedure for the abatement of a nuisance. The  
5     ordinance shall, at a minimum, provide that the owner of the parcel,  
6     and anyone known to the board of supervisors to be in possession  
7     of the parcel, be given notice of the abatement proceeding and an  
8     opportunity to appear before the board of supervisors and be heard  
9     prior to the abatement of the nuisance by the county. However,  
10    nothing in this section prohibits the summary abatement of a  
11    nuisance upon order of the board of supervisors, or upon order of  
12    any other county officer authorized by law to summarily abate  
13    nuisances, if the board or officer determines that the nuisance  
14    constitutes an immediate threat to public health or safety.

15    (b) In any action to abate a nuisance, whether by administrative  
16    proceedings, judicial proceedings, or summary abatement, the  
17    owner of the parcel upon which the nuisance is found to exist shall  
18    be liable for all costs of abatement incurred by the county,  
19    including, but not limited to, administrative costs, and any and all  
20    costs incurred in the physical abatement of the nuisance. Recovery  
21    of costs pursuant to this section shall be in addition to and shall  
22    not limit any prevailing party's right to recover costs pursuant to  
23    Sections 1032 and 1033.5 of the Code of Civil Procedure or any  
24    other provision of law.

25    (c) A county may, by ordinance, provide for the recovery of  
26    ~~attorneys'~~ attorney's fees in any action, administrative proceeding,  
27    or special proceeding to abate a nuisance. If the ordinance provides  
28    for the recovery of ~~attorneys'~~ attorney's fees, it shall provide for  
29    recovery of ~~attorneys'~~ attorney's fees by the prevailing party, rather  
30    than limiting recovery of ~~attorneys'~~ attorney's fees to the county  
31    if it prevails. The ordinance may limit recovery of ~~attorneys'~~

1 attorney's fees by the prevailing party to those individual actions  
2 or proceedings in which the county elects, at the initiation of that  
3 individual action or proceeding, to seek recovery of its own  
4 attorneys' attorney's fees. In no action, administrative proceeding,  
5 or special proceeding shall an award of attorneys' attorney's fees  
6 to a prevailing party exceed the amount of reasonable attorneys'  
7 attorney's fees incurred by the county in the action or proceeding.

8 (d) If the owner fails to pay the costs of the abatement upon  
9 demand by the county, the board of supervisors may order the cost  
10 of the abatement to be specially assessed against the parcel. The  
11 assessment may be collected at the same time and in the same  
12 manner as ordinary county taxes are collected, and shall be subject  
13 to the same penalties and the same procedure and sale in case of  
14 delinquency as are provided for ordinary county taxes. All laws  
15 applicable to the levy, collection, and enforcement of county taxes  
16 are applicable to the special assessment.

17 (e) If the board of supervisors specially assesses the cost of the  
18 abatement against the parcel, the board also may cause a notice of  
19 abatement lien to be recorded. The notice shall, at a minimum,  
20 identify the record owner or possessor of property, set forth the  
21 last known address of the record owner or possessor, set forth the  
22 date upon which abatement of the nuisance was ordered by the  
23 board of supervisors and the date the abatement was complete,  
24 and include a description of the real property subject to the lien  
25 and the amount of the abatement cost.

26 (f) However, if the board of supervisors does not cause the  
27 recordation of a notice of abatement lien pursuant to subdivision  
28 (e), and any real property to which the costs of abatement relates  
29 has been transferred or conveyed to a bona fide purchaser for value,  
30 or a lien on a bona fide encumbrancer for value has been created  
31 and attaches to that property, prior to the date on which the first  
32 installment of county taxes would become delinquent, then the  
33 cost of abatement shall not result in a lien against that real property  
34 but shall be transferred to the unsecured roll for collection.

35 (g) Recordation of a notice of abatement lien pursuant to  
36 subdivision (e) has the same effect as recordation of an abstract  
37 of a money judgment recorded pursuant to Article 2 (commencing  
38 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part  
39 2 of the Code of Civil Procedure. The lien created has the same  
40 priority as a judgment lien on real property and continues in effect

1 until released. Upon order of the board of supervisors, or any  
2 county officer authorized by the board of supervisors to act on its  
3 behalf, an abatement lien created under this section may be released  
4 or subordinated in the same manner as a judgment lien on real  
5 property may be released or subordinated.

6 (h) The board of supervisors may delegate the hearing required  
7 by subdivision (a), prior to abatement of a public nuisance, to a  
8 hearing board designated by the board of supervisors. The hearing  
9 board shall make a written recommendation to the board of  
10 supervisors. The board of supervisors may adopt the  
11 recommendation without further notice of hearing, or may set the  
12 matter for a de novo hearing before the board of supervisors.

13 (i) ~~The Notwithstanding Chapter 14 (commencing with Section~~  
14 ~~27720) of Part 3 of Division 1 of Title 3, the board of supervisors~~  
15 ~~may, by ordinance, delegate the powers and duties specified by~~  
16 ~~this section to a one or more hearing officer appointed pursuant~~  
17 ~~to Section 27720 the powers and duties specified by this section.~~  
18 ~~officers.~~

19 **SECTION 1.**

20 **SEC. 2.** Section 53069.4 of the Government Code is amended  
21 to read:

22 53069.4. (a) (1) The legislative body of a local agency, as the  
23 term “local agency” is defined in Section 54951, may by ordinance  
24 make any violation of any ordinance enacted by the local agency  
25 subject to an administrative fine or penalty. The local agency shall  
26 set forth by ordinance the administrative procedures that shall  
27 govern the imposition, enforcement, collection, and administrative  
28 review by the local agency of those administrative fines or  
29 penalties. Where the violation would otherwise be an infraction,  
30 the administrative fine or penalty shall not exceed the maximum  
31 fine or penalty amounts for infractions set forth in subdivision (b)  
32 of Section 25132 and subdivision (b) of Section 36900.

33 (2) (A) The administrative procedures set forth by ordinance  
34 adopted by the local agency pursuant to paragraph (1) shall provide  
35 for a reasonable period of time, as specified in the ordinance, for  
36 a person responsible for a continuing violation to correct or  
37 otherwise remedy the violation prior to the imposition of  
38 administrative fines or penalties, when the violation pertains to  
39 building, plumbing, electrical, or other similar structural or zoning  
40 issues, that do not create an immediate danger to health or safety.

1 (B) Notwithstanding Chapter 14 (commencing with Section  
2 27720) of Part 3 of Division 1 of Title 3, the administrative  
3 procedures adopted by ordinance pursuant to paragraph (1) may  
4 authorize the appointment of one or more hearing officers to hear  
5 and decide issues regarding ordinance violations and the  
6 imposition of administrative fines or penalties.

7 (C) A local agency may, by ordinance, combine the  
8 administrative procedures adopted pursuant to paragraph (1) with  
9 nuisance abatement procedures adopted by ordinance pursuant  
10 to Section 25845.

11 (3) (A) If the owner of real property fails to pay the fines or  
12 penalties upon demand by the local agency, the local agency may,  
13 after notice and public hearing, order the fines or penalties to be  
14 specially assessed against the parcel. The assessment may be  
15 collected at the same time and in the same manner as ordinary  
16 county taxes are collected, and shall be subject to the same  
17 penalties and the same procedure and sale in case of delinquency  
18 as are provided for ordinary county taxes. All laws applicable to  
19 the levy, collection, and enforcement of county taxes are applicable  
20 to the special assessment.

21 (B) If the local agency specially assesses the cost of the  
22 abatement against the parcel, the agency also may cause a notice  
23 of abatement lien to be recorded. The notice shall, at a minimum,  
24 identify the record owner or possessor of property, set forth the  
25 last known address of the record owner or possessor, set forth the  
26 date upon which assessment was ordered by the local agency, and  
27 include a description of the real property subject to the lien and  
28 the amount of the lien.

29 (C) If the local agency does not cause the recordation of a notice  
30 of lien pursuant to subdivision (B), and any real property on which  
31 the assessment has been imposed has been transferred or conveyed  
32 to a bona fide purchaser for value, or a lien on a bona fide  
33 encumbrancer for value has been created and attaches to that  
34 property, prior to the date on which the first installment of county  
35 taxes would become delinquent, then the assessment shall not  
36 result in a lien against that real property but shall be transferred to  
37 the unsecured roll for collection.

38 (D) Recordation of a notice of abatement lien pursuant to  
39 subparagraph (B) has the same effect as recordation of an abstract  
40 of a money judgment recorded pursuant to Article 2 (commencing

1 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part  
2 2 of the Code of Civil Procedure. The lien created has the same  
3 priority as a judgment lien on real property and continues in effect  
4 until released. Upon order of the local agency, or any officer  
5 authorized by the local agency to act on its behalf, an abatement  
6 lien created under this section may be released or subordinated in  
7 the same manner as a judgment lien on real property may be  
8 released or subordinated.

9 (b) (1) Notwithstanding the provisions of Section 1094.5 or  
10 1094.6 of the Code of Civil Procedure, within 20 days after service  
11 of the final administrative order or decision of the local agency is  
12 made pursuant to an ordinance enacted in accordance with this  
13 section regarding the imposition, enforcement or collection of the  
14 administrative fines or penalties, a person contesting that final  
15 administrative order or decision may seek review by filing an  
16 appeal to be heard by the superior court, where the same shall be  
17 heard de novo, except that the contents of the local agency's file  
18 in the case shall be received in evidence. A proceeding under this  
19 subdivision is a limited civil case. A copy of the document or  
20 instrument of the local agency providing notice of the violation  
21 and imposition of the administrative fine or penalty shall be  
22 admitted into evidence as prima facie evidence of the facts stated  
23 therein. A copy of the notice of appeal shall be served in person  
24 or by first-class mail upon the local agency by the contestant.

25 (2) The fee for filing the notice of appeal shall be as specified  
26 in Section 70615. The court shall request that the local agency's  
27 file on the case be forwarded to the court, to be received within  
28 15 days of the request. The court shall retain the fee specified in  
29 Section 70615 regardless of the outcome of the appeal. If the court  
30 finds in favor of the contestant, the amount of the fee shall be  
31 reimbursed to the contestant by the local agency. Any deposit of  
32 the fine or penalty shall be refunded by the local agency in  
33 accordance with the judgment of the court.

34 (3) The conduct of the appeal under this section is a subordinate  
35 judicial duty that may be performed by traffic trial commissioners  
36 and other subordinate judicial officials at the direction of the  
37 presiding judge of the court.

38 (c) If no notice of appeal of the local agency's final  
39 administrative order or decision is filed within the period set forth  
40 in this section, the order or decision shall be deemed confirmed.

1     (d) If the fine or penalty has not been deposited and the decision  
2     of the court is against the contestant, the local agency may proceed  
3     to collect the penalty pursuant to the procedures set forth in its  
4     ordinance.

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